

Federal Overtime Claim

22. At all relevant times, the Defendant had a policy and practice of refusing to pay overtime compensation to its employees for their hours worked in excess of forty hours per workweek.

23. As a result of the Defendant's willful failure to compensate its employees, including Plaintiff and the Collective Action members, at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek, the Defendant has violated and, continues to violate, the FLSA, 29 U.S.C. §§ 201 *et seq.*, including 29 U.S.C. §§ 207(a)(1) and 215(a).

SECOND CLAIM FOR RELIEF:
NEW YORK LABOR LAW

24. Plaintiff, on behalf of himself, realleges and incorporates by reference paragraphs 1 through 23 as if they were set forth again herein.

25. At all relevant times, Plaintiff was employed by the Defendant within the meaning of the New York Labor Law, §§ 2(5), 2(6), 651(5) and 651(6).

State Overtime Claim

26. Defendant willfully violated Plaintiff's rights by failing to Plaintiff overtime compensation at rates not less than one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a workweek, in violation of the New York Minimum Wage Act and its implementing regulations. N.Y. Labor Law §§ 650 *et seq.*; 12 NYCRR §142-2.2.

Spread of Hours Claim

27. Defendant willfully violated Plaintiff's rights by failing to pay Plaintiff an additional hour of pay at minimum wage for each day he worked more than ten (10)

hours, in violation of the New York Minimum Wage Act and its implementing regulations. N.Y. Labor Law §§650 et seq.; 12 NYCRR §142-2.4.

28. The Defendant's New York Labor Law violations have caused Plaintiff irreparable harm for which there is no adequate remedy at law.

29. Due to the Defendant's New York Labor Law violations, Plaintiff is entitled to recover from Defendant his unpaid overtime compensation, spread of hours compensation, damages for unreasonably delayed payment of wages, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to New York Labor Law § 663(1).

PRAYER FOR RELIEF

Wherefore, Plaintiff on behalf of himself and all other similarly situated Collective Action Members, respectfully requests that this Court grant the following relief:

- a. Designation of this action as a collective action on behalf of the Collective Action Members and prompt issuance of notice pursuant to 29 U.S.C. §216(b) to all similarly situated members of an FLSA Opt-In Class, apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. §216(b) and appointing Plaintiff and his counsel to represent the Collective Action members;
- b. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and the New York Labor Law;

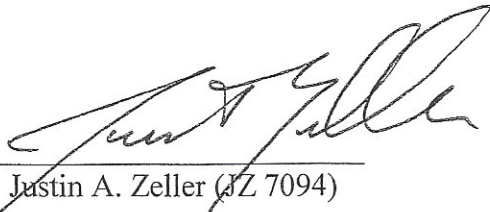
- c. An injunction against the Defendant and its officers, agents, successors, employees, representatives and any and all persons acting in concert with it, as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein;
- d. An award of unpaid overtime compensation due under the FLSA and the New York Labor Law;
- e. An award to Plaintiff for unpaid spread of hours compensation due under the New York Labor Law;
- f. An award of liquidated and/or punitive damages as a result of the Defendants' willful failure to pay overtime compensation pursuant to 29 U.S.C. § 216;
- g. An award of liquidated and/or punitive damages as a result of the Defendants' willful failure to pay overtime and spread of hours compensation pursuant to the New York Labor Law;
- h. An award of prejudgment and postjudgment interest;
- i. An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and
- j. Such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiff demands a trial by jury on all questions of fact raised by the complaint.

Dated: New York, New York
September 20, 2007

By: _____


Justin A. Zeller (JZ 7094)

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PROPOSED CLASS**